

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

DEBORAH A. JONES,

Plaintiff, : Case No. 3:10-cv-381

-vs- : District Judge Walter Herbert Rice  
HEARTLAND-BEAVERCREEK Magistrate Judge Michael R. Merz

OF DAYTON OH LLC,

Defendant.

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**REPORT AND RECOMMENDATIONS**

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This case is before the Court on Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Defendant seeks to dismiss the pattern and practice claims in Counts I and II and all of Count V.

In her Response, Plaintiff indicates she had no intention of pleading any pattern and practice claim (Doc. No. 9-1 PageID 69). Accordingly, the Complaint is construed as Plaintiff has indicated it should be and Defendant should treat it as not raising any pattern and practice claims.

Plaintiff's counsel also indicate they concede Defendant is correct as to Count V. It is accordingly respectfully recommended that Count V be dismissed.

December 30, 2010.

s/ **Michael R. Merz**  
United States Magistrate Judge

## **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6<sup>th</sup> Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).